THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS DEC -2

MARSHALL DIVISION

DANIEL COWLES and KANDACE COWLES

Plaintiffs,

V.

LOWE'S HOME CENTER, INC.

Defendant/Third-Party Plaintiff

V.

JAMES HARDIE BUILDING PRODUCTS, INC.

Defendant/Third-Party Defendant §

CIVIL ACTION NO. 2-03CV-190-DF JURY

AGREED FIRST AMENDED SCHEDULING ORDER

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In accordance with the Parties agreements regarding the modification of the Scheduling Order dated September 4, 2003, the court hereby enters the following Agreed First Amended Scheduling Order pursuant to this Court's Local Rule CV-16 and Fed. R. Civ. P. 16.

- 1. Other parties shall be joined by October 1, 2003. (A motion for leave to add parties is not necessary provided parties are added by this date, otherwise, leave of court is required. The date to add parties should be at least 60 days before the deadline for filing motions listed in (3) below).
- 2. Amended pleadings shall be filed by December 1, 2003. (A motion for leave to amend is not necessary if filed before this date; however, this date should be at least 30 days before the deadline for filing motions listed in (3) below).
- 3. All motions to transfer, motions to remand, motions to dismiss, motions for summary judgment, or other dispositive motions shall be filed by January 1, 2004. (In order for the court to make a ruling on these motions before the final pre-trial conference, this date should be at least 60 days before the final pre-trial conference).
- 4. Disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(1)(2) and Local Rule CV-26(b) shall be made by the plaintiff by January 2, 2004, and by all other parties by January 12, 2004. Thereafter, each party shall have until January 16, 2004 to object to any other party's expert witnesses. Such objections shall be made by a motion to strike

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or limit expert testimony and shall be accompanied by a copy of the expert's report in order to provide the court with all of the information necessary to make a ruling on any objection.

- 5. Pre-trial disclosure pursuant to Fed. R. Civ. P. 26(a)(3) shall be made by the plaintiff by January 26, 2004, and by the defendant by January 30, 2004.
- 6. All discovery shall be commenced in time to be completed by January 22, 2004. (This date should be a date at least 30 days before the final pre-trial conference (10).
- 7. This case shall be mediated by February 2, 2004. If the parties agree on a mediator, they shall so notify the court in writing of the name, address and telephone number of the mediator by December 23, 2003. Otherwise, the court will select a mediator.
- 8. A Joint Final Pretrial Order prepared in accordance with Local Rule CV-16(b) and Joint Proposed Jury Instructions and Verdict Form (or proposed Findings of Fact and Conclusions of Law in non-jury cases) shall be delivered by the plaintiff to the court by February 16, 2004. (This date should be a date at least 10 days before the final pre-trial conference). In order to enable the plaintiff to prepare and deliver the Joint Final Pretrial Order and Joint Proposed Jury Instructions and Verdict Form (or proposed Findings of Fact and Conclusions of Law in non-jury cases) to the court, and to enable the defendants and any third-parties to participate in the preparation of such documents, the plaintiff shall provide the plaintiff's share of the necessary information to all other parties by February 2, 2004. Thereafter, all defendants and third-parties shall provide their share of the information to plaintiff by February 9th, 2004.
- 9. Any motions in limine shall be filed by February 16, 2004. (This date should be at least 10 days prior to the final pre-trial conference date).

SIGNED, this the 25 day of 1000, 2003.

DAVID FOLSOM

UNITED STATES DISTRICT JUDGE